APPENDICES

APPENDIX A

Unpublished Per Curiam Order
UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

On Remand from the Supreme Court of the United States
July 11, 1975

Before

Hon. John S. Hastings, Senior Circuit Judge
Hon. Luther M. Swygert, Circuit Judge
Hon. Wilbur F. Pell, Circuit Judge

SYLVIA WILSON, etc., et al.,
Plaintiffs-Appellees,

No. 73-1541, 73-1749

vs.

EDWARD T. WEAVER, etc., et al.,
Defendants-Appellants.

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 72 C 1960
Richard B. Austin, Judge.

This cause came on to be heard on remand from the Supreme Court of the United States.

On consideration whereof, we remand this case to the district court with instruction that its judgment be vacated without prejudice to plaintiffs' right to pursue their constitutional claims and any statutory claims not precluded by the Supreme Court's opinion in *Burns* v. *Alcala,* 420 U.S. —— (1975), in accordance with the order of this court entered this date. Costs in these appeals are taxed in favor of the prevailing parties.

APPENDIX B

MOTION TO VACATE JUDGMENT DATED JULY 11, 1975, WITH RESPECT TO COSTS

Now come plaintiff-appellees, by their attorneys, and move this Court to vacate the portion of the judgment in the above-captioned case entered on July 11, 1975, related to costs. In support of this motion, plaintiffs-appellees bring to the Court's attention the fact that the named plaintiffs-appellees, Sylvia Wilson and her daughter, are paupers, as well as all other members of the plaintiff class and were granted leave to proceed in forma pauperis by the district court on August 9, 1972. (See Docket Sheet.) The judgment of this Court entered on July 11, 1975, provides that costs in these appeals "are taxed in favor of the prevailing parties." On July 16, 1975, the attorney general's office, as attorney for the appellants, submitted a bill of costs in the amount of $632.85. Plaintiffs-appellees submit that costs should not be awarded against them as paupers. Further, in view of the fact that plaintiffs-appellees originally prevailed in the Court of Appeals in this case, and the fact

that this cause has been remanded for further proceedings and it is unclear who the prevailing parties will ultimately be, plaintiffs-appellees submit that this Court should exercise its discretion and order each party to bear its own costs for the previous appeal.

Respectfully submitted,

SHELDON ROODMAN,
One of the Attorneys for
Plaintiffs-Appellees,
Legal Assistance Foundation
of Chicago,
64 East Jackson Boulevard,
Chicago, Illinois 60604,
922-5625.

APPENDIX C

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
July 31, 1975
Before
Hon. Luther M. Swygert, Circuit Judge

SYLVIA WILSON, etc., et al.,
Plaintiffs-Appellees,

No. 73-1541, 73-1749

vs.

EDWARD T. WEAVER, etc., et al.,
Defendant-Appellants.

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division.
(No. 72 C 1960)

This matter comes before the Court on Plaintiffs-appellees' motion to vacate judgment dated July 11, 1975, with respect to costs and defendants-appellants' objection to plaintiffs' motion. On consideration whereof,

IT IS HEREBY ORDERED that plaintiffs-appellees' motion be GRANTED, and that the sentence of the July 11, 1975, order that costs in these appeals in favor of the prevailing parties be and the same is hereby stricken.

This order shall amend the July 11, 1975 order, and it is hereby ordered that each party bear its own costs.

APPENDIX D

MOTION TO VACATE ORDER OF JULY 31, 1975 AND FOR REVIEW BY THE ENTIRE COURT

NOW COME defendants-appellants by WILLIAM J. SCOTT, Attorney General of the State of Illinois, and pursuant to Rules 27(c) and 35 F.R.A.P., file this their motion to vacate the order entered July 31, 1975 and for review by the court, and in support say as follows:

1. The order of July 31, 1975 vacates that portion of the judgment order of July 11, 1975 which awarded costs to the prevailing party on appeal, defendants-appellants.

2. The motion of plaintiffs-appellees to vacate judgment dated July 11, 1975 with respect to costs, filed July 21, 1975, was merely an unsupported suggestion and assigned no error to the court's order of July 11, 1975 nor did it set forth compelling legal or factual reasons to vacate the judgment order and excuse costs in this case, as provided in Rule 39 F.R.A.P. An unsuccessful litigant, whether proceeding in forma pauperis or not, is liable for costs unless good cause exists to order otherwise. Title 28 U.S.C. § 1915(e). Cf. *Duhart* v. *Carlson*, 469 F. 2d 471, 478 (C.A. 10, 1972), cert. den. 410 U.S. 958, 93 S. Ct. 1431 (1973); *Perkins* v. *Cingliano*, 296 F. 2d 567, 568 (C.A. 4, 1961).

3. Defendants-appellants have prevailed on the merits of the issues which were the subject of their appeal.

a) The United States Supreme Court granted defendants-appellants' Petition for Writ of Certiorari and reversed the decision of the Seventh Circuit Court of Appeals. [—— U.S. ——, 95 S. Ct. 1440 (1975)].

b) The original decision of the Seventh Circuit Court of Appeals was itself divided. [499 F. 2d 155, 158 (1974)].

c) The original decision of the District Court was overruled on the precise grounds urged by defendants-appellants in both the District Court and the Circuit Court. [358 F. Supp. 1147 (1972)].

d) The position urged by defendants-appellants in the District Court has been upheld, after prolonged and unrelenting opposition by plaintiffs-appellees throughout every phase of the appeal. [See, e.g., opposition to Stay pending appeal, Brief, filed June 27, 1973 and Motion for Reconsideration, filed July 19, 1973; opposition to Recall and Stay of Mandate pending appeal, Motion filed May 23, 1974 and Response filed June 3, 1974; opposition to Stay of Judgment pending review on Certiorari, Memo filed June 17, 1974, and Motion to Full Court to Vacate Stay, filed June 21, 1974, docketed under A-1212; opposition to Remand to the District Court, Motion filed May 5, 1975.]

4. Defendants-appellants and the People of the State of Illinois have been put to great expense to vindicate their rights, in addition to the time and effort required to overcome the procedural obstructions interposed by plaintiffs-appellees.

a) The docket fee cost of printing appellants' briefs in the Seventh Circuit Court of Appeals was $657.85. (See Cost Bill).

b) The docket fee and cost of printing appellants' Petition for Writ of Certiorari in the United States Supreme Court was $832.40, which was not recoverable pursuant to Supreme Court Rule 57(3).

5. The order of July 31, 1975 does not acknowledge or discuss any of the matters contained in the objections filed by defendants-appellants on July 24, 1975 nor does it

make appropriate findings to overrule the objections of defendants- appellants and to support entry of the order.

6. It should be noted that defendants-appellants are not seeking the recovery of costs from a pauper, Although suit is nominally brought by Sylvia Wilson, in fact, the suit has been maintained as a class action, developed, financed, prosecuted and controlled by the Legal Assistance Foundation of Chicago and East Garfield Legal Services, and the allowable costs should be paid by that non-prevailing party.

a) The Legal Assistance Foundation, and its constituent offices, have heretofore, in other litigation, aggresively sought and received substantial costs and attorneys fees from officers of the State of Illinois payable directly to the Foundation as attorney.

b) On or about March 21, 1975 in *Rodriguez* v. *Trainer*, 69 C 2615, Sheldon Roodman, on behalf of the Legal Aid Foundation, attorney for plaintiffs, petitioned the District Court for the award of $16,925 incurred, inter alia, for court appearances and preparation work in opposition to defendants' Motion for Stay of the Court's Order, and motions, briefs and oral argument on appeal before the Seventh Circuit Court of Appeals, and preparation of Brief in Opposition to Petition for Writ of Certiorari before the United States Supreme Court. (See Roodman Affidavit, and Memorandum Opinion attached hereto as exhibit and incorporated by reference.)

c) On August 12, 1974, in *Rodriguez* v. *Weaver*, 69 C 2615, the Honorable Bernard M. Decker ordered the Director of the Illinois Department of Public Aid to pay $1,200 "to the attorney for the plaintiffs, Sheldon Roodman, [also attorney for plaintiffs-appellees in the case at bar] on behalf of the Legal Assistance Foundation of Chicago."

d) On November 8, 1973, in *Jeffries* v. *Weaver*, 70 C 3196, the Honorable Richard B. Austin ordered the Director and a Supervisor of the Illinois Department of Public Aid to pay $225 to the Edwin F. Mandel Legal Aid Clinic.

e) This court did itself on December 10, 1973, in *United States* v. *School Board Commissioners of Indianapolis*, No. 72-1948, enter an order for payment of fees directly to the Legal Services Organization. (copy attached hereto); see also, e.g., orders entered February 11, 1975 in *Weisenberger* v. *Huecker*, No. 7299 (copy attached hereto) and on February 19, 1975, In *Milburn* v. *Huecker*, No. 7301-B (copy attached hereto).

7. The order entered July 31, 1975 vacating judgment for costs is arbitrary, capricious and discriminatory.

a) The order contains no findings or conclusions to support vacature of the earlier judgment order, and disallowance of costs.

b) On information and belief, the Legal Aid Foundation has been allowed costs against defendants herein by this court in every case where they have prevailed on the merits.

c) The Legal Aid Foundation is now permitted to evade payment of costs in a case where defendants have prevailed on the merits, even though those costs may be drawn from the fund created by costs heretofore payed by defendants to the Legal Aid Foundation in other cases.

d) No reason for such disparity in application of the costs rule is advanced by either plaintiffs-appellees or the court.

e) It is inequitable and a denial of equal protection to make the Legal Aid Foundation the beneficiary of costs at the expense of defendants, but deny reciprocal obligation to repay costs when the roles have been reversed.

f) The order of July 31, 1975 is oppressive and operates to further penalize defendants for prevailing on the appeal, and to chill and inhibit effective defense on public policy issues.

8. The question of costs presented by defendants-appellants in this case is one of fundamental importance in the impartial administration of justice, and a definitive ruling is essential to secure uniformity of decisions within the Seventh Circuit.

WHEREFORE defendants-appellants pray that the order of July 31, 1975 amending the earlier entered order of July 11, 1975 be vacated and held for naught, and the question of costs be reviewed by the entire court.

Respectfully submitted,

WILLIAM J. SCOTT,
Attorney General of Illinois,
160 North LaSalle Street,
Chicago, Illinois 60601.

HERBERT L. CAPLAN,
Assistant Attorney General,

(Of Counsel),

793-3587

D6

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GLADYS RODRIGUEZ, et al.,

Plaintiffs,

MRS. LORETHA SMITH, et al.,

Plaintiffs-Intervenors,

v.

JAMES L. TRAINOR, Acting Director, Illinois Department of Public Aid, et al.,

Defendants.

No. 69 C 2615

AFFIDAVIT

I SHELDON ROODMAN, under oath, hereby state as follows:

1. I am and have been the principal attorney for the class of plaintiffs in the above case.

2. From May 14, 1971, the date on which plaintiffs originally filed their motion for a rule to show cause, through October 15, 1974, the date on which the Supreme Court of the United States denied the defendants' petition for a writ of certiorari to review the Seventh Circuit decision upholding the $100.00 contempt sanction of this Court, I have

expended the following amount of time in connection with the proceedings necessitated by the contempt of the defendants:

(a) From May 14, 1971, to February 8, 1973 (the date of the hearing and court denial of a stay of its $100.00 contempt order), I spent 108 hours in connection with twenty-two (22) court appearances, four (4) memoranda, and four (4) motions. These memoranda and motion included but were not limited to:

Preparation of Motion for Issuance of Order to Show Cause (May 4, 1971) — Eight (8) hours.

Memorandum in Opposition to Petition to Strike Plaintiffs' Motion for Issuance of Order to Show Cause (June 1, 1971) — Sixteen (16) hours.

Memorandum in Opposition to Defendants' Motion to Vacate the Order of June 16, 1971, and to Present the Issues Therein to the Three-Judge Panel (July 2, 1971) — Six (6) hours.

Memorandum in Support of Motion for Modification and for Civil Contempt (November 15, 1971) — Forty (40) hours.

Memorandum (October 24, 1972)—Six (6) hours.

For the twenty-two court appearances, including preparation time, only thirty-six (36) hours is charged although considerably more time was expended in reviewing month-to-month noncompliance with the court order. Also, no time is allocated for matters unrelated to the contempt of the defendant leading to the $100.00 contempt sanction.

(b) From January 19, 1973, to June 3, 1974, I expended eighty (80) hours in connection with the motions, briefs, and oral argument before the Seventh Circuit in *Rodriguez* v. *Swank*, 496 F. 2d 1110 (7th Cir. 1974).

(c) From August 1974 to October 15, 1974, I expended forty (40) hours in preparing the Brief of the Respondents in Opposition to Petition for Certiorari.

SHELDON ROODMAN.

Subscribed and sworn to before me
this 5th day of November, A.D. 1974.

EDWARD GREENFIELD,

Notary Public.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASERN DIVISION

GLADYS RODRIGUEZ, et al.,

Plaintiffs,

MRS. LORETHA SMITH, et al.,

Plaintiffs-Intervenors,

vs.

JAMES L. TRAINOR, etc., et al.,

Defendants.

No. 69 C 2615

MEMORANDUM OPINION

Plaintiffs have moved for an order granting them reasonable attorneys' fees for all proceedings seeking to obtain a civil contempt order designed to bring about compliance with the October, 1970 injuction in this case. Plaintiffs' attorneys have submitted affidavits establishing that a total of 409.5 attorney hours were spent in these proceedings, and contend a reasonable counsel fee amounts to $16,925. Defendants oppose this motion on the grounds that the award of such attorneys' fees is barred by the Eleventh Amendment, and that the facts in this case do not, as a matter of law, justify the award of attorneys' fees.

Defendants rely on *Edelman* v. *Jordan*, 415 U.S. 651 (1974), and *Jordan* v. *Gilligan*, 500 F. 2d 701 (6th Cir. 1974), *petition for cert. filed*, 43 U.S.L.W. 3299 (U.S. Oct. 9, 1974) (No. 74-403), in arguing that such an award is barred by

the Eleventh Amendment. In *Edelman* v. *Jordan,* the Supreme Court held that a federal court may not award compensatory retroactive welfare benefits from a state treasury. But it specifically approved awards which were:

> "the necessary result of compliance with decrees which by their terms were prospective in nature. . . . Such an ancillary effect on the state treasury is a permissible and often an inevitable consequence of the principle announced in *Ex parte Young*. . . ." 415 U.S. at 668.

When the instant case was before the Seventh Circuit, *Rodriguez* v. *Swank,* 496 F. 2d 1110 (1974), *cert. denied,* 43 U.S. L.W. 3213 (U.S. Oct. 15, 1974), the court held that the $100 per applicant sanction was within the *Edelman* v. *Jordan* principle of ancillary relief and was therefore not barred by the Eleventh Amendment. Defendants are now seeking to have this court hold that although the remedy fashioned in this case, requiring payments to be made from state funds, is not itself prohibited by the Eleventh Amendment, attorneys' fees, which would be incident to that relief, are so prohibited.

In *Jordan* v. *Gilligan,* the Sixth Circuit declined to follow the Second, Fifth and Ninth Circuits, and held that "the Eleventh Amendment prohibits the awarding of attorneys' fees against unconsenting sovereign states." 500 F. 2d at 709.[1] But *Jordan* v. *Gilligan* stands alone. In *Class* v. *Nor-*

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1. The court drew authority from the Third Circuit opinion in *Skehan* v. *Board of Trustees of Bloomsburg State College,* 501 F. 2d 31 (1974). But as a recent district court opinion in that Circuit noted, *Skehan* concerned a different issue and therefore was not controlling on the issue of attorneys' fees in such a case. That court went on to conclude that the Eleventh Amendment does not bar an order directing individual state officials to pay an award of attorneys' fees out of state funds. *Downs* v. *Dept. of Public Welfare,* 43 U.S.L.W. 2270 (E.D. Pa. Dec. 20, 1974).

ton, 505 F. 2d 123 (1974), the Second Circuit expessly held that an award of attorneys' fees against state officials is not barred by the Eleventh Amendment. *Citing Rodriguez* v. *Swank,* the court found that such an award was within the "ancillary effect" exception of *Edelman* v. *Jordan,* 505 F. 2d at 127. In *Gates* v. *Collier,* 489 F. 2d 298 (1973), the Fifth Circuit held that the award of attorneys' fees in a Section 1983 case payable from the state treasury was not prohibited by the Eleventh Amendment; the Ninth Circuit similarly ruled in *Brandenburger* v. *Thompson,* 494 F. 2d 885 (1974). Even in the Sixth District itself, *Jordan* v. *Gilligan* has fallen into some disrepute. See *Taylor* v. *Perini,* 503 F. 2d 899, 911-12 (6th Cir. 1974) (Edwards, J., dissenting); and *Milburn* v. *Huecker,* 500 F. 2d 1279 (6th Cir. 1974).

This court declines to follow *Jordan* v. *Gilligan* and relies on the cases cited above as well as *Sims* v. *Amos,* 304 F. Supp. 691 (M.D. Ala.) (three-judge court), *aff'd,* 409 U.S. 942 (1972), in holding that such an award of attorneys' fees is not prohibited by the Eleventh Amendment.[2]

Defendants further argue that the award of attorneys fees is not appropriate in this case. Defendants first contend that plaintiffs are not reasonably entitled to attorneys' fees for proceedings in this matter on appeal before the Seventh Circuit and before the Supreme Court of the United States, and submit that plaintiffs should be com-

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2. *Accord, Bond* v. *Stanton,* No. 73 H 184 (N.D. Ind., filed Jan. 13, 1975). The Seventh Circuit has, to date, declined to express an opinion on this issue. *See Hairston* v. *R. & R. Apartments,* No. 74-1449 (7th Cir., filed Feb. 19, 1975) (Slip op. p. 4, n. 2).

pensated only for proceedings before the district court. Defendants necessitated such further proceedings, however, by seeking appellate review of this court's order of November 9, 1972. Defendants cannot complain, therefore, that plaintiffs seek compensation for services expended in responding to those actions instituted by defendants themselves. *Cf. Jeanty* v. *McKey & Poague, Inc.*, 496 F. 2d 1119, 1121 (7th Cir. 1974).

Defendants next assert that plaintiffs are not entitled to attorneys' fees because plaintiffs' counsel are employed by the Legal Assistance Foundation of Chicago, a nonprofit organization financed by the Chicago Bar Association, United Charities of Chicago, and the federal Office of Economic Opportunity. The fact that plaintiffs are not obligated to pay the Legal Assistance Foundation for their services is not a bar to an award of attorney fees. All that is required is the existence of an attorney-client relationship. *Hairston* v. *R & R Apartments*, No. 74-1449 (7th Cir., filed Feb. 19, 1975). In this case the litigants furthered the interest of a significant class, persons who are applicants for and potential recipients of welfare assistance under the AFDC program, by effectuating a strong congressional policy expressed in 42 U.S.C. § 601; they have thereby met the test of the "private attorney general" doctrine.

Given the totality of circumstances in this case, this court finds that an award of attorneys' fees is both permissible and appropriate. Accordingly, plaintiffs' motion is hereby granted. Plaintiffs will prepare a suitable judgment order and submit it to this court for entry, after affording notice to defendants.

ENTER:

BERNARD M. DECKER,
United States District Judge.

DATED: March 21, 1975.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHER DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Judge, Honorable Bernard M. Decker.

Cause No. 69 C 2615. Date: April 10, 1975.

Title of Cause: *Rodriguez, et al.* v. *Trainor, et al.*

Brief Statement of Motion: Motion for Entry of Order with Respect to the Award of Attorneys' Fees.

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of moving counsel:

SHELDON ROODMAN
Legal Assistance Foundation of Chicago
64 East Jackson Boulevard
Chicago, Illinois 60604

Representing Plaintiffs

Names and Addresses of other counsel entitled to notice and names of parties they represent:

WILLIAM J. SCOTT, ESQ.
Attorney General
100 North LaSalle
Chicago, Ill. 60602

Attention: George Grumley

BERNARD CAREY, ESQ.
State's Attorney
500 Civic Center
Chicago, Illinois 60602

Attention: Mercer Cook
Represent Defendants.

Enter Judgment Order for attorneys' fees in sum of $16,925.00 for Plaintiffs.

Reserve space below for notations by minute clerk.

(Draft)

DECKER, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GLADYS RODRIGUEZ, et al.,
Plaintiffs,
MRS. LORETHA SMITH, et al.,
Plaintiffs-Intervenors,
JAMES L. TRAINOR, etc., et al.,
Defendants.

No. 69 C 2615

JUDGMENT ORDER

This cause coming on to be heard pursuant to plaintiffs' motion for attorneys' fees with supporting affidavits, and this Court, after considering the memoranda of the parties, having granted the plaintiffs' motion pursuant to the memorandum opinion entered on March 24, 1975, and this Court having considered the (1) time expended by the attorneys in this case based on their affidavits; (2) the novelty and substantial difficulty of the questions involved which were clearly matters of first impression; (3) the considerable skill and expertise required to perform the legal services properly (4) the preclusion of other work by the plaintiffs' attorneys due to the necessity of enforcing the underlying decree in this case and establishing the sanction for civil contempt of the Court's decree; (5) the customary fee for similar legal services in the community; (6) the substantial amounts involved in this case, and the significant results obtained on behalf of thousands of needy families eligible for AFDC; and (7) the experience, reputation,

and demonstrated ability of the lawyers for the plaintiffs in this case, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The defendant James L. Trainor, in his official capacity as Director of the Illinois Department of Public aid, shall pay, or cause to be paid, the sum of $..... as reasonable attorneys' fees to the Legal Assistance Foundation of Chicago for the legal services rendered by the attorneys in this cause on behalf of the members of the plaintiff class.

ENTER:

.....

United States District Court Judge.

DATED: .....

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
December 10, 1973
Before
Hon. LUTHER M. SWYGERT, Chief Judge

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* No. 72-1948 vs. THE BOARD OF COMMISSIONERS OF THE CITY OF INDIANAPOLIS, et al., *Defendants-Appellants,* BARBARA GARDNER, etc., et al., *Intervenors.*	Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division. (IP 68 C 225) Hon. S. Hugh Dillon, Judge.

This matter comes before the Court on intervenors-appellees' reply to defendants-appellants' response to their application for attorneys' fees and costs with supporting memorandum opinion, and on intervenors-appellees' motion for reconsideration. On consideration whereof:

IT IS ORDERED that the portion of this Court's Order dated November 28, 1973 which taxed $2,500.00 in attorneys' feet and $398.72 in costs against defendants-appellants shall stand and not be disturbed.

IT IS FURTHER ORDERED that said orders be clarified so as to award said attorneys' fees and costs to counsel for intervenors-appellees, personally, with subsequent reimbursement by them to the account of Legal Services Organization of Indianapolis, Inc.

D18

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

MARIANNE WEISENBERGER, et al.,

Plaintiffs,

v.

GAIL S. HUECKER, et al.,

Defendants.

Civil Action
No. 7299-A

JUDGMENT

The Court having entered its findings of fact and conclusions of law,

IT IS ORDERED AND ADJUDGED that the Legal Aid Society recover the sum of $2,000 as attorneys' fees against the defendants, Gail S. Huecker and Daniel R. Tierney, jointly and severally. Said judgment will be paid within 30 days hereinafter and shall bear interest at the rate of 6 percent per annum from the date of judgment until paid. Dated 2-11-75.

CHARLES N. ALLEN,
United States District Judge.

cc: Counsel of Record

D19

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

ELIZABETH MILBURN, et al.,
Plaintiffs,
v.
GAIL S. HUECKER, et al.,
Defendants.

No. 7301-B

MEMORANDUM AND ORDER

This cause comes before the Court on remand from the United States Court of Appeals for the Sixth Circuit. This Court has been directed to reconsider the denial of costs and attorneys' fees to the Legal Aid Society, counsel for plaintiffs-appellants, and to make findings of fact sufficient to permit meaningful appellate review.

Attention has been directed to *Hall* v. *Cole,* 412 U.S. 1, 93 S. Ct. 1943 (1973), which indicates that such relief may be appropriate where "overriding considerations indicate the need for such recovery".

As to findings of fact, the General Counsel of the Legal Aid Society has filed an affidavit setting forth certain facts relating to the nature of the society, its status, and its financial condition. Item No. 7 in the affidavit, which relates directly to the instant case, states as follows:

> "Although time records were not kept in this case, a reasonable estimate of the amount of time spent on this case by L.A.S. attorneys is 50 hours in the District Court and 30 hours in the Sixth Circuit Court of Appeals."

Finding no affidavit or other proof which contradicts the contents of the General Counsel's affidavit, its contents are adopted as the Court's findings of fact. It is noted, however, that this admitted uncertainty and speculation as to the amount of time spent in the litigation of this case makes the task of equitably awarding attorneys' fees very difficult.

It appears that the Congress has placed a high priority on the prompt processing of applications for welfare benefits. *Goldberg* v. *Kelly*, 397 U.S. 254 (1970). With this in mind, when it becomes necessary to istitute legal proceedings to enforce this Congressional policy and a right of constitutional proportions, one acting to enforce this right is entitled to recover the cost incurred. In those instances in which no costs are actually incurred by the litigants, as in the instant case, attorneys who undertake to represent them should be compensated for their efforts. *Bradley* v. *School Board of the City of Richmond, Virginia*, 53 F.R.D. 28 (E.D. Va., 1971).

WHEREFORE, IT IS ORDERED AND ADJUDGED that the defendants Huecker and Tierney, jointly and severally, pay the sum of $2,500.00 as attorneys' fees to the Legal Aid Society.

RHODES BRATCHER,

United States District Judge.

Entered: February 19, 1975.

August Winkemorra, Jr., Clerk.

Copies to: Counsel of record.

APPENDIX E

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604

September 10, 1975

Before

Hon. THOMAS E. FAIRCHILD, Chief Judge
Hon. LUTHER M. SWYGERT, Circuit Judge
Hon. WALTER J. CUMMINGS, Circuit Judge
Hon. WILBUR F. PELL, JR., Circuit Judge
Hon. JOHN PAUL STEVENS, Circuit Judge
Hon. ROBERT A. SPRECHER, Circuit Judge
Hon. PHILIP W. TONE, Circuit Judge
Hon. WILLIAM J. BAUER, Circuit Judge

SYLVIA WILSON, etc.,
Plaintiff-Appellee,

No. 73-1541, 73-1749

vs.

EDWARD T. WEAVER, etc., and DAVID L. DANIEL, etc.,
Defendants-Appellants.

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division.
(72 C 1960)

This matter comes before the Court on the "MOTION TO VACATE ORDER OF JULY 31, 1975 AND FOR REVIEW BY THE ENTIRE COURT," filed herein on Au-

gust 6, 1975 by counsel for the defendants-appellants; and the Circuit Rule 29 citation of additional authority pertaining thereto, filed herein on August 15, 1975 by counsel for the defendants-appellants. Upon consideration whereof, treating said documents as a petition for reconsideration en banc of this Court's order of July 31, 1975, and no judge of this Court having voted to allow such reconsideration.

IT IS ORDERED that the aforesaid motion (and Circuit Rule 29 submission in support thereof) be, and the same is hereby, DENIED.